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9 Attorneys for USACM Liquidating Trust

10 **UNITED STATES BANKRUPTCY COURT**  
 11 **DISTRICT OF NEVADA**

12 In re:

13 **USA COMMERCIAL MORTGAGE**  
 14 **COMPANY,**

15 **Debtor.**

16 Case No. BK-S-06-10725-LBR

17 **CHAPTER 11**

18 **OBJECTION OF USACM**  
 19 **LIQUIDATING TRUST TO PROOF**  
 20 **OF CLAIM NO. 10725-00676-2 IN**  
 21 **THE AMOUNT OF \$50,000 BY**  
 22 **MARCIA J. KNOX TRUST; AND**  
 23 **CERTIFICATE OF SERVICE**

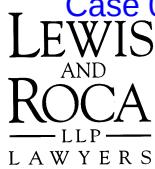
24 Date of Hearing: November 15, 2011

25 Time of Hearing: 9:30 a.m.

26 Estimated Time for Hearing: 10 Minutes

27 The USACM Liquidating Trust (the "USACM Trust") recently discovered that  
 28 approximately 140 proofs of claim ("POC's") or portions of proofs of claim had not been  
 29 properly entered into the database of Sierra Consulting Group, LLC ("Sierra") and,  
 30 therefore, had not been included in the loan by loan objections filed by the USACM Trust.  
 31 The POC's discovered by Sierra contain claims that relate to investments in loans that the  
 32 USACM Trust has already processed on a loan by loan basis. Accordingly, where  
 33 appropriate the USACM Trust is objecting to these remaining POC's on a claim by claim  
 34 basis.

35 Pursuant to § 502 of title 11 of the United States Bankruptcy Code (the  
 36 "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the  
 37 "Bankruptcy Rules"), the USACM Trust requests an order disallowing in full Proof of  
 38 Claim No. 10725-00676-2 (the "Subject Proof of Claim") by Marcia J. Knox Trust ("Knox



1 Trust") against USA Commercial Mortgage Company ("USACM") in the amount of  
 2 \$50,000.<sup>1</sup>

3 Here, the Subject Proof of Claim is based upon a \$50,000 investment in the  
 4 Gateway Stone Loan. On May 8, 2008, the USACM Trust filed omnibus objections to  
 5 claims arising out of investments in the Gateway Stone Loan because the borrower had  
 6 repaid that loan previously. The Court heard and sustained the Gateway Stone omnibus  
 7 objections at the omnibus hearing on June 9, 2008.<sup>2</sup>

## 8                   **MEMORANDUM OF POINTS AND AUTHORITIES**

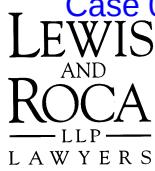
### 9                   **I. BACKGROUND FACTS**

#### 10                   **a. The USACM Bankruptcy**

11 On April 13, 2006 ("Petition Date"), USACM, USA Securities, LLC ("USA  
 12 Securities"), USA Capital Realty Advisors, LLC ("USA Realty"), USA Capital  
 13 Diversified Trust Deed Fund, LLC ("DTDF"), USA Capital First Trust Deed Fund, LLC  
 14 ("FTDF," together with DTDF, the "Funds") (collectively, the "Debtors"), filed voluntary  
 15 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate  
 16 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of  
 17 the Bankruptcy Code. Debtors' post-petition management of the Debtors was under the  
 18 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
 19 ("Mesirow"), who served as the Chief Restructuring Officer.

20  
 21  
 22  
 23                   <sup>1</sup> In compliance with Nevada LR 3007, a copy of the first page of the Subject Proof of Claim is attached as  
**Exhibit A**

24                   <sup>2</sup>In Support of the Gateway Stone omnibus objections the USACM Trust filed a Declaration of Edwin M.  
 25 Burr ("Burr Decl.") [DE 6330]. A Copy of the Burr Decl. will be served on the Knox Trust with this  
 26 Objection. To avoid confusion, the USACM Trust will serve the Burr Decl. with the hearing date of June  
 9, 2008 redacted and "Exhibit A" to the Burr Decl. omitted. Exhibit A lists the Direct Lenders whose  
 claims were affected by the Gateway Stone omnibus objections. Those Direct Lender claims have no  
 relevance to the claims by the Knox Trust or to this objection.



1       USACM is a Nevada corporation that, prior to the Petition Date, was in the  
2 business of underwriting, originating, brokering, funding and servicing commercial loans  
3 primarily secured by real estate, both on behalf of investors and for its own account.

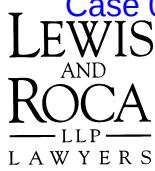
4       That business included the solicitation of individual investors to purchase fractional  
5 interest in loans that USACM originated and then serviced. These investors, totaling  
6 approximately 3,600 as of the Petition Date, are referred to as "Direct Lenders" in  
7 USACM's bankruptcy case and in this Objection. Although USACM serviced and  
8 sometimes originated the loans in which the Direct Lenders invested, generally USACM  
9 was not a borrower on these loans.

10      On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third  
11 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.  
12 2376] (the "Confirmation Order"). Under the Plan, the USACM Trust is the successor to  
13 USACM with respect to standing to seek allowance and disallowance of Claims. The  
14 USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007.  
15 Geoffrey L. Berman is the Trustee.

16      **b. The Gateway Stone Loan**

17      On or about February 28, 2007, the Gateway Stone Loan was paid off in full, as  
18 reflected in USACM's books and records. (Burr Decl. ¶ 8.) Shortly thereafter, USACM  
19 processed the payoff and distributed the proceeds to the Direct Lenders on the Gateway  
20 Stone Loan. (Burr Decl. ¶ 8.)

21      The Direct Lenders were in turn paid in full for their investment in the Gateway  
22 Stone Loan, subject to servicing fees and any other charges under their respective Loan  
23 Servicing Agreements and this Court's orders, including the Confirmation Order. In  
24 general, the Direct Lenders received their principal and interest on the Gateway Stone  
25 Loan, less sums withheld for servicing fees, servicer advances, Prepaid Interest and sums  
26 known as the 2% Holdback pursuant to the confirmed Plan. On the Effective Date of the



1 Plan, the Prepaid Interest was applied, a portion of the 2% Holdback was applied to the  
 2 allowed claims of the Direct Lender Committee, and the balance paid to the Direct  
 3 Lenders. (Burr Decl. ¶ 9.)

4 **II. JURISDICTION**

5 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
 6 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
 7 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

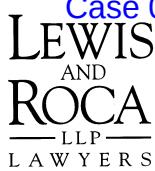
8 The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and  
 9 Bankruptcy Rule 3007.

10 **III. APPLICABLE AUTHORITY**

11 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed  
 12 will be allowed unless a party in interest objects. If a party in interest objects to the proof  
 13 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and  
 14 shall allow the Claim except to the extent that the Claim is “unenforceable against the  
 15 debtor . . . under any . . . applicable law for a reason other than because such claim is  
 16 contingent or unmatured.” 11 U.S.C. § 502(b). A properly filed proof of claim is  
 17 presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof  
 18 of claim controverts the presumption, the creditor ultimately bears the burden of  
 19 persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*  
 20 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.  
 21 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

22 **IV. OBJECTION AND CONCLUSION**

23 According to USACM's books and records, the Gateway Stone Loan was repaid.  
 24 Accordingly, the USACM Trust respectfully requests that the Court disallow in full the  
 25 Subject Proof of Claim. The USACM Trust also requests such other and further relief as  
 26 is just and proper.



1 DATED this 28th day of September, 2011.

2 LEWIS AND ROCA LLP

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4

By /s/ John Hinderaker (#18024)

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6 John C. Hinderaker, AZ 18024 (*pro hac vice*)

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10 *Attorneys for the USACM Liquidating Trust*

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12 Copy of the foregoing and the Berman Decl. [DE 6330]  
with the hearing date redacted and Exhibit A  
omitted was mailed by first class postage prepaid on  
September 28, 2011 to:

13

14 Marcia J Knox Living Trust Dated 8/16/04  
C/O Marcia J Knox Trustee  
1885 Vintners Pl  
15 Reno, NV 89519-8334

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LEWIS AND ROCA LLP

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/s/ Renee L. Creswell  
18 Renee L. Creswell

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